

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MIGAO TUPUOLA and DEPARTMENT OF THE NAVY,
NAVAL SUPPLY CENTER, San Diego, CA

*Docket No. 98-1468; Submitted on the Record;
Issued November 19, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant met his burden of proof to establish that he sustained a hearing loss in the performance of duty.

The Board finds that appellant did not meet his burden of proof to establish that he sustained a hearing loss in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition, for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition, for which compensation is claimed or, stated differently, medical evidence establishing that the

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

In the present case, appellant claimed that he sustained a hearing loss due to exposure to hazardous noise in the workplace while he worked as a supply clerk and warehouseman between 1976 and 1996. By decision dated August 14, 1997, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained a hearing loss in the performance of duty. By decision dated February 13, 1998, the Office denied modification of its August 14, 1997 decision.⁵

The Board notes that appellant did not submit sufficient medical evidence to establish that he sustained a hearing loss in the performance of duty.

Appellant submitted a September 3, 1997 report, in which Dr. Nelman C. Low, an attending Board-certified otolaryngologist, reported the findings of his evaluation of appellant's hearing in September 1997 and indicated that the findings were consistent with a "bilateral severe to profound, possibly mixed hearing loss." Dr. Low noted that appellant exhibited a "moderate to severe primarily sensorineural hearing loss" with essentially normal impedance and recommended that appellant obtain hearing aids. This report, however, is of limited probative value on the relevant issue of the present case in that it does not contain an opinion on causal relationship.⁶ He did not provide a clear opinion that appellant's hearing loss was due to the accepted employment factor, *i.e.*, exposure to noise at work. In a report dated April 20, 1997, Dr. Ben D. Buchholtz, a Board-certified otolaryngologist, to whom the Office referred appellant, diagnosed "bilateral mild high frequency mixed hearing loss above 3,000 hertz" and tinnitus. Dr. Buchholtz stated, "In summary, this patient has subjective complaints of hearing deficit. His examination and testing indicate that his subjective complaints reflect bilateral nonorganic hearing loss with the findings demonstrated by testing of a mild high frequency mixed loss above

⁴ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁵ The Office had accepted that appellant was exposed to hazardous noise in the workplace.

⁶ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

3,000 hertz.”⁷ However, Dr. Buchholtz also did not provide an opinion on the cause of appellant’s hearing loss.⁸

The decisions of the Office of Workers’ Compensation Programs dated February 13, 1998 and August 14, 1997 are affirmed.

Dated, Washington, D.C.
November 19, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁷ Dr. Buchholtz noted that upon appellant’s hearing testing in March 1997 he exhibited good speech discrimination scores of 80 percent on the right and 70 percent on the left at 90 decibels.

⁸ In a report dated July 10, 1997, Dr. Brian Schindler, a Board-certified otolaryngologist, serving as an Office medical consultant, indicated that he had reviewed the medical evidence, including the report of Dr. Buchholtz, and had concluded that appellant did not establish a causal relationship between noise exposure at work and his hearing loss.